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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON

5 GRANT THOMAS McADAMS,

6 Plaintiff,

7 v.

8 JANET GEMBERLING, ANDREW
9 REMINGTON, MICHAEL TRUE,
10 JANE SNYDER, MICHAEL J.
11 REZNICEK, JOHN and JANE
DOE(S), and RICHARD and RACHEL
ROE(S),

12 Defendants.

NO: 4:16-cv-05133-MKD

ORDER DIRECTING ADDITIONAL
BRIEFING, DISMISSING
DEFENDANT GEMBERLING AND
STRIKING SURRESPONSE

ECF Nos. 12, 21

13 BEFORE THE COURT is Plaintiff's request for a 30-day extension of time
14 for filing a brief addressing the *Gunwall* factors. ECF No. 19, ¶ 6.7. Plaintiff is a
15 prisoner at Coyote Ridge Corrections Center in Connell, Washington. Proceeding
16 *pro se*, Plaintiff filed suit and his case was removed from Franklin County Superior
17 Court as an action under 42 U.S.C. § 1983. ECF No. 1. Defendants are
18 represented by Jerry Scharosch. On April 10, 2017, Plaintiff was ordered to amend
19 or voluntarily dismiss his complaint. ECF No. 11.

1 A. *Amended Complaint*

2 On June 8, 2017, Plaintiff filed his First Amended Complaint. ECF No. 15.
3 Plaintiff alleged that he was diagnosed with a delusional disorder by Defendant
4 Snyder, the diagnosis was adopted by Defendant Reznicek, and Plaintiff suffered
5 damages as a result. ECF No. 15 at 22-24. With respect to Defendants Remington
6 and True, Plaintiff alleged they mishandled mail that was sent to Plaintiff by a
7 court and this caused additional damages. ECF No. 15 at 16-21. Defendant
8 Gemberling previously represented Plaintiff and had filed a Motion to Dismiss for
9 Failure of Timely Service on April 17, 2017. ECF No. 12. Plaintiff did not name
10 Defendant Gemberling in the First Amended Complaint. ECF No. 15 at 1.
11 Accordingly, **Defendant Gemberling's motion to dismiss without prejudice**
12 **(ECF No. 12) is granted.**

13 B. *Plaintiff's Request for Extension of Time for Gunwall¹ Briefing*

14 On June 20, 2017, Defendants Remington, True, Snyder, and Reznicek filed
15 a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), ECF No. 16, set for
16 hearing without argument August 8, 2017. On July 14, 2017, Plaintiff filed a
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18 ¹ See *State v. Gunwall*, 106 Wash.2d 54, 64 (1986) (courts will only engage in
19 independent inquiry of state constitutional claims if the party invoking the state
20 constitutional provision briefs the six nonexclusive factors).

1 response, ECF No. 19, and on July 19, 2017, Defendants replied, ECF No. 20.

2 Without seeking the Court's prior approval, on August 3, 2017, Plaintiff filed a
3 surresponse. ECF No. 21.

4 Plaintiff's First Amended Complaint, filed June 8, 2017, alleged violations
5 of several of his rights protected by the federal constitution, including the First
6 Amendment. ECF No. 15 at 6. In addition, Plaintiff alleged several of his rights
7 under the Washington State Constitution were violated and he sought relief on that
8 basis. ECF No. 15 at 13. In Defendants' Motion to Dismiss, they respond that
9 Plaintiff's citation to the state constitution does not alone state a valid claim;
10 Plaintiff has not specifically invoked, argued, and analyzed the state-based
11 protections, including the *Gunwall* factors, and, under the facts presented, the
12 Washington Constitution does not provide greater protection than those afforded
13 by the federal constitutional provisions Plaintiff invoked. ECF No. 16 at 7-8. In
14 his response to Defendants' motion, Plaintiff asked the Court for a 30-day
15 extension of time to brief the *Gunwall* factors. ECF No. 19, ¶ 6.7.

16 After review, the Court grants Plaintiff's request for an extension of 30 days
17 to brief the *Gunwall* factors.

18 *C. Surreesponse*

19 With respect to Plaintiff's surresponse, ECF No. 21, the Court notes that this
20 is the second such pleading Plaintiff has filed in this case. Previously, Plaintiff

1 sought leave for filing a surresponse. ECF No. 7. A surresponse has been defined
2 as “[a] second response by someone who opposes a motion.” *Lee v. City of*
3 *Kingman*, 124 F.Supp.3d 985, 993 n.1 (D. Ariz. August 25, 2015) (citing Black’s
4 Law Dictionary (10th ed. 2014)). Since Plaintiff is not a movant, he has filed a
5 surresponse.

6 Surreponses are not authorized by any Federal Rule of Civil Procedure,
7 absent prior leave of court. *Lee*, 124 F.Supp.3d at 993 n.1 (citing in part *Padilla v.*
8 *Bechtel Const. Co.*, No. CV 06 286 PHX LOA, 2007 WL 625927, at *1 (D. Ariz.
9 Feb. 27, 2007) (regarding surresponses).

10 Here, nothing is offered to justify the Court’s consideration of a surresponse.

11 Accordingly,

12 **IT IS ORDERED:**

13 1. Defendant Gemberling Motion to Dismiss Without Prejudice, **ECF**
14 **No. 12, is GRANTED.** Claims against Defendant Gemberling are dismissed
15 without prejudice.

16 2. The Court directs additional briefing:

17 (a) Plaintiff shall file any brief addressing the *Gunwall* factors by
18 September 11, 2017.

19 (b) Defendant shall file any response by September 25, 2017.

20 (c) Plaintiff may file any reply by October 5, 2017.

1 3. Plaintiff's Surreponse, **ECF No. 21, is STRICKEN** as improperly
2 filed.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter
4 this Order and forward a copy to Plaintiff and counsel for Defendants.

5 DATED August 9, 2017.

6 s/ Mary K. Dimke
7 MARY K. DIMKE
8 UNITED STATES MAGISTRATE JUDGE
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